Supreme Court, U.S.
FILED

081348 FEB 27 2009

OFFICE OF THE CLERK

No. 08 –_____

In the
Supreme Court of the United States

Donald E. Railsback,
Petitioner

v.

The State of Washington,
Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of Washington.

PETITION FOR A WRIT OF CERTIORARI

Donald E. Railsback
Pro Se for Petitioner
51 Wellington Park
Baytown, TX 77520
(713) 277-5600

QUESTIONS PRESENTED

1. Does a criminal defendant have a constitutional right to be present at all phases of his trial?
2. Is a criminal defendant entitled to present evidence, call witnesses, testify on his own behalf, and be entitled to compulsory process.
3. Is a criminal defendant required to use a public records request procedure to obtain discovery rather than relying on criminal rules of discovery and Brady v. Maryland?
4. Are state supreme court justices require to recuse from considering an appeal when they were on the trial court witness list?
5. Does a person other than the judge assigned to a case have the appropriate authority to conduct a trial, and does that render the verdict void.
6. Does fraud upon the court occur when a person acting as a judge is not assigned to the case?
7. Is a citizen required to obey an unlawful order?

TABLE OF CONTENTS

QUESTIONS PRESENTED Page i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTION AND STATUTES 1

STATEMENT OF THE CASE 1

REASONS FOR GRANTING THE PETITION 12

APPENDIX

Washington Supreme Court
Commissioner Order A-1
Washington Court of Appeals Order A-4
Washington Supreme Court Order A-5

TABLE OF AUTHORITIES

Aetna . v Lavoie, 475 U.S. 813 (1986) 8
Brady v. Maryland, 373 U.S. 83 (1963) 4
California v. Trombetta, 467 US 479 (1984) 5
Crawford v. Washington, 541 U.S. 36 (2004) 9
Hazel-Atlas Glass v. Hartford-Empire
322 U.S. 238 (1944). 8
Lewis v. United Sates, 146 U.S. 370 (1892) 6

OPINI0N BELOW

A panel of justices of the Washington Supreme Court entered an order on December 2, 2008, denying review. Case No. 82034-1. This Petition for Cert is timely.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Am V - No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Am. VI- In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which

district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. Const. Am. XIV - No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATE STATUTES

RCW 9A.52.070- (1) A person is guilty of criminal trespass in the first degree if he knowingly enters or remains unlawfully in a building.

RCW 9A.52.090- In any prosecution under RCW 9A.52.070, it is a defense that: (2) The premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises.

RCW 9A.76.040 - A person is guilty of resisting arrest if he intentionally prevents or attempts to prevent a peace officer from lawfully arresting him.

RCW 9A.72.160 - A person is guilty of intimidating a judge if a person directs a threat to a judge because of a ruling or decision of the judge in any official

proceeding, or if by use of a threat directed to a judge, a person attempts to influence a ruling or decision of the judge in any official proceeding

STATEMENT OF THE CASE

All federal issues were raised in the trial court and the appellate courts.

Every thing in this statement of the case was raised on appeal in the state courts and the state did not disput even one of these assertions and therefore must be accepted as a verity.

To say this case is about trespassing and resisting arrest would be like saying Watergate was nothing more than a simple burglary.

Petitioner (Railsback) was arrested on June 15, 2006 and charged with trespassing (RCW 9A.52.070) and resisting arrest (RCW 9A.76.040. At the time petitioner was arrested, he was standing at the Washington Supreme court clerk's counter requesting to see the file of WA SC Case No. 77345-9 – In re: the Recall of Gregoire as governor. Railsback was in a public area of a public building during normal operating hours for a lawful purpose. This is an absolute statutory defense to a charge of trespassing. When arrested, Railsback was fully cooperative with the arresting officer and voluntarily walked to the patrol car and actually seated himself inside. At the Thurston County jail, Railsback continued to cooperate, so much so that a rather small State Patrol officer was alone with Railsback,

who is 6'3" and rather strong, when being searched. Furthermore there was no evidence presented at trial that Railsback was resisting arrest. The only statement ever made was that Railsback "tensed up" when grabbed by a state patrol officer when unlawfully arrested. That is hardly "resisting arrest".

At the arraignment on June 22, 2006; Railsback was denied the opportunity to look at the charging documents prior to entering a plea as required by CrRLJ 4.1(a)(2). In fact there was no complaint filed with the court by any party who might have been a victim; namely the Chief Justice of the Washington State Supreme Court.

During a preliminary hearing regarding discovery, the court refused to order the state to turn over discovery as required by the criminal rules and *Brady v. Maryland*, 373 U.S. 83 (1963). The prosecutor simply said, "We're not going to give it to him" and they never did.

At this time the trial judge was a Judge Stilz. At a later hearing, Judge Stilz was mysteriously absent and a Mr. Lawrence King was sitting on the bench. When asked why Judge Stilz was not there, Mr. King said that he was now running the trial. When asked if Judge Stilz had entered an order of recusal, Mr. King declined to answer.

At a pretrial hearing, an order in limine was entered stating that Railsback could not question Chief

Justice Alexander about criminal conduct he has committed against Railsback. There was no attempt to deny that Justice Alexander had committed the criminal conduct alleged, just that Railsback could not raise that issue. This is contrary to due process. "Whether rooted in the Due Process Clause of the 14th Amendment or the Confrontation clause of the 6th Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." Crane, supra, at 690 (quoting *California v. Trombetta*, 467 U.S. 485 (1984).

Trial was scheduled for September 20, 2006 (the speedy trial date was September 22, 2006). On that date, Railsback informed the court that he had not received discovery and because of that, was unprepared to go to trial through no fault of his own. Mr. King, sitting on the bench agreed that discovery had not been made, but issued no order telling the prosecutor to comply. Discovery was never provided.

The trial started on October 16, 2006, over the defendant's objection that discovery had still not been handed over by the prosecutor, that the defendant had been denied the opportunity to interview the state's witnesses, nor been afforded compulsory process to obtain witnesses on his behalf. Mr. King simply didn't care.

The trial was continued until the morning of October 18, 2006. Early on during the morning proceedings, Mr. King ordered Railsback to leave the court under

threat of arrest. Railsback was doing nothing to hinder or hamper the smooth operation of the court, was not disruptive and was not interrupting any questioning of witnesses. Mr. King apparently did not like some of the questions being asked because the answers would have been very damaging to the state's case and would have exposed judicial corruption that reaches all the way to the state supreme court. Railsback left the courtroom and courthouse rather than being arrested. At no time was Railsback threatened with contempt of court. The trial court ordered Railsback to leave his own trial without cause and Railsback was, at all times, simply a phone call away. "One of the most basic rights guaranteed by the confrontation clause is the accused's right to be present at every stage of his trial." *Lewis v. United States*, 146 U.S. 370 (1892)

Railsback was convicted of both trespassing and resisting arrest on October 18, 2006 without having the opportunity to testify, call or question witnesses, or be present to hear the verdict of the jury.

Railsback promptly filed a motion to dismiss the complaint based on a speedy trial violation, violation of the confrontation clause, discovery violations, due process violation, Brady violations, and violation of his right to be present at all phases of the trial. Mr. King failed to address any of the issues raised and simply sentenced Railsback to two days in prison. At sentencing, Mr. King acknowledged that Judge Stilz, and not himself was assigned to the case and admitted he ordered Railsback to leave the

courtroom during the trial under threat of arrest after denying he had done so during the pre-sentencing hearing.

Mr. King, for whatever reason, stated his admiration for Railsback and compared Railsback's "civil disobedience" with Gandhi. Only a man with a guilty conscience would make such a statement.

Mr. King never addressed the motion for a new trial, neither in writing, nor in an oral ruling.

Railsback promptly appealed his conviction based on the above argument to the superior court and relied on the pleadings in the trial court in doing so. The superior court simply denied the appeal with no explanation and Railsback filed a motion to reconsider. To this date, there has never been an order entered on that motion.

After a time, Railsback filed a petition to the Washington Court of Appeals for discretionary review since the Superior Court had not entered an order on the motion to reconsider. The Court of appeals simply ruled that Railsback had not filed a timely notice of appeal with the Court of Appeals, which is rather odd since there was no final order from the Superior Court. Without addressing the merits of the case, the Court of Appeals simply stated that the appeal was filed late.

Railsback filed a timely appeal to the Washington State Supreme Court. A panel of five justices entered

an order stating that the modification of a supreme court commissioner's ruling was being denied. The problem here lies with the fact that there is no Washington constitutional or statutory provision to the office of Supreme Court Commissioner. In other words, it is an extra judicial office created by the Washington Supreme Court and that person has no lawful authority to exercise any judicial powers. Chief Justice Alexander admitted this at trial. In addition four of the five justices were on the witness list for the trial and because they all had a personal liberty interest in the outcome of the trial. As will become apparent, each of them had a very personal interest in seeing that this and other cases never see the light of day."... under the Due Process Clause no judge "can be a judge in his own case [or be] permitted to try cases where he has an interest in the outcome." *In re Murchison*, 349 U.S. 133, 136 (1955); cited in *Aetna Life v. Lavoie* 475 U.S. 813 (1986).

Even if the state's claim that Railsback was late in filing his appeal, which is not the case, this statement of the case clearly meets the requirements for fraud upon the court pursuant to *Hazel-Atlas Glass v. Hartford-Empire* 322 U.S. 238 (1944).

In addition, since the state has conceded by not contesting the fact that Mr. King was not assigned to the case, the conviction is void ab initio for lack of jurisdiction.

It should also be noted that this case never appeared on a docket available to the public at any time in either the Court of Appeals or the State Supreme Court. In the instance of the State Supreme Court, every case that is appealed to the State Supreme Court appears on its website and assigned to a panel for consideration as to whether to accept an appeal; or not. This case was the fourth occasion Railsback has had a case before the Washington Supreme Court, and at no time was there anything on the court's docket or web site that would inform the public that any of the cases even existed. The only conclusion one can reasonably draw from this is that the members of the Washington Supreme Court had something to hide from the public and is conclusive proof that each of these cases was pre-judged with the intent of denying Railsback his right to due process. The Framers "knew that judges...could not always be trusted to safeguard the rights of the people" and "great state trials where the impartiality of even the those at the highest levels of the judiciary might not be so clear." *Crawford v Washington*, 541 U.S. 36 (2004). This was such a trial and the judiciary of Washington offered no protection to Railsback. In fact many judges intentionally denied those protections.

In short, there has never been a real review on the merits of this case by any appellate court in the State of Washington. Just as the trial was a kangaroo court, so were the appeals.

As is readily apparent based on this petition, there must be something else going on here; and there is plenty.

This all started in 1999 in a commercial arbitration involving Railsback and another party that resulted in an award against Railsback. During the arbitration confirmation proceedings in Clark County Superior Court, Railsback caught the judge and the opposing counsel conspiring to obstruct justice. There was a garnishment even though there was no final order entered on the arbitration award. When Railsback pointed this out to the judge, he refused to identify an order that was a final judgment. An appeal was made and basically denied, even though it was never denied that there was no final judgment.

Railsback then filed a criminal report with the sheriff's office and he refused to take a report. Railsback then filed and served a tort claim on the county, and the county defaulted, but the judge refused to enter the default judgment even though required by the court rules. His statement was simply "I don't feel comfortable." There is no appellate court decision that allows that as an excuse for not performing a ministerial duty. After presenting the default judgment to the judge on at least two other occasions, the judge, who knew I had no duty to notify the county, personally contacted the prosecutor's office. This is certainly contrary to the Code of Judicial Conduct. Eventually this judge entered an order denying default judgment even

though the county never provided a meritorious defense and excusable neglect.

Railsback then filed a petition for a writ of mandamus with the state supreme court, which has jurisdiction in Mandamus actions against judges. As soon as it was filed and served, the trial court judge recused himself from the case. There has never been an opinion entered on this case or published as required by the Washington Constitution. This was done to cover up judicial corruption in Clark County.

In another action sort of related, Railsback filed a recall action against the Clark County Sheriff for failure to investigate a corrupt judge (who a bit earlier was forced into alcohol rehab after I sent a letter to the then Washington State Chief Judge Richard Guy). During that hearing, I caught the judge committing perjury based on a lie he made concerning a document that did not exist in the court file. I was able to get a criminal report filed with the Sheriff's office only because Railsback got a date stamped copy back from one of his clerks just seconds before he got to her desk. The Sheriff's department investigated and decides the case had enough merit to forward to the county prosecutor. Despite the fact that Judge Stephen M. Warning's name is mention nine times in the criminal referral, the prosecutor has the defendant listed as "First Name: NONE; Last Name: NONE". Apparently the case is still "on intake" eight years later. Obviously, if he was named in the prosecutor's files, the judge would have had to go on administrative leave until

the case was resolved, and then the corruption I have encountered for years would have been exposed.

There has been a lot more, including the filing of a federal racketeering and civil rights action that was dismissed on three occasions so far, but another motion to reinstate will be filed shortly. Apparently there is a federal judge in Washington who claims that the U.S District Courts do not have jurisdiction over civil RICO and Civil Rights Actions.

I'll skip over a bunch of other stuff and get to what directly led to my arrest and conviction in this case.

On August 12, 2002, I met with Chief Justice Gerry Alexander. I assume he agreed to meet with me because he knew that the Skamania County Sheriff (adjoining Clark County) had made a criminal referral to the FBI regarding the corruption I had been encountering and wanted to know what I had to say. During this meeting, Gerry Alexander admitted that I was entitled to a $1.2 million judgment in my action against Clark County in 2000. When asked what he was going to do about it, he said "Nothing"; I assume hoping I'd be frustrated or intimidated into just going away. I assured him that I would not; and I haven't. This and other crimes he committed are what the trial court did not want exposed at my trial and why I was unconstitutionally removed from the courtroom and why I was not allowed to call or question witnesses.

During the week of August 12, 2002, I had a phone conversation with John McKay, the then US Attorney for Western Washington and Jeff Sullivan, the then chief criminal deputy US Attorney, and now US Attorney. Both of them agreed that I was a victim of civil rights violations, but they would not do anything about it and included a statement that they were friends with many of those involved. They also stated that they had more important things to do, but had no answer when asked what "things" were so important that they could not investigate of prosecute what they acknowledged was racketeering in the highest state court of Washington.

Most people would have simply given up, but I didn't. This leads to the events surrounding my arrest and prosecution. In the few months prior to my arrest, I was in contact with the Washington State Patrol and filed a criminal report against Justice Alexander. I was informed that the WSP would not investigate and basically told to kiss off. I then communicated a very direct threat to arrest Alexander for obstruction of justice and other assorted crimes. Washington permits private citizens to arrest felons and obstruction of justice is a felony. It is also a felony to threaten a judge for any action related to his official duties, but judges do not have judicial immunity for their criminal conduct, although the governor and AG of Washington seem to think they do based on the separation of powers doctrine.

I was not charged with threatening a judge because it was a lawful threat and lawful threats are legal. The only conclusion one can make is that Justice Alexander is a felon or I would have been charged with threatening a judge. A reasonable person could easily assume I was not charged with that crime in a fraudulent effort to keep evidence of his crimes out of my trial.

REASONS FOR GRANTING THE PETITION

The violations of the due process and confrontation clauses are so contrary to the Constitution of the United States and the entire history of jurisprudence are such that they cannot be allowed to stand.

Respectfully submitted,

Donald E Railsback
Pro Se for Petitioner
51 Wellington Park
Baytown, TX 77520
713-277-5600

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON Respondent, v. Donald E. Railsback, Petitioner.	NO. 82034-1 RULING DENYING REVIEW

The Thurston County District Court found Donald Railsback guilty of criminal trespass and obstructing a law enforcement officer. Mr. Railsback appealed to the Thurston County Superior Court. But he failed to perfect the appeal or even act on the case for several months. On January 15, 2008, the Superior Court dismissed the appeal as abandoned. On May 15, 2008, Mr. Railsback filed a "notice of appeal" directed to the Court of Appeals. [1] Because this notice was not filed within 30 days of the superior court's decision, the Court of Appeals informed Mr. Railsback that the notice was untimely, that he could move for an extension of time, and that the matter would be placed on the motion calendar of dismissal. Mr. Railsback moved for an extension of time, and the State responded. In an order entered July 25, 2008, the Court of Appeals denied the motion for extension of time. Mr. Railsback now seeks this court's review.[2]

The time for filing a notice for discretionary review will be extended only in extraordinary circumstances and to prevent a gross miscarriage of justice. RAP 18.8(b). "Extraordinary circumstances"

included cases in which "the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party's control." Reichelt v. Raymark Indus.,Inc., 52 Wn. App. 763, 765, 764 P.2d 653 (1988); Shumway v. Payne, 136 Wn 2d 383, 395, 964 P.2d 349 (1998). Negligence, or lack of "reasonable diligence," does not amount to "extraordinary circumstances." Beckman v. Dep't of Social & Health Servs., 102 Wn. App. 687, 695, 11P.3d 313 (2000). The court will ordinarily hold that the interest in finality of decisions outweighs the privilege of a litigant to obtain an extension of time. RAP 18.8(b). In light of this policy, the standard set forth in RAP 18.8(b) is rarelysatisfied. Shumway, 136 P.2nd at 395; Reichelt, 52 Wn. App. at 765.

Since the Court of Appeals denied an extension of time, and thus never accepted review, Mr. Railsback may seek review by this court on by a motion for discretionary review under RAP 13.5. See RAP 13.3; 12.3. Review is appropriate under that rule only if the Court of Appeals (1) committed an obvious error which would render further proceedings useless; (2) committed probable error which either substantially alters the status quo or substantially limits the freedom of a party to act; or (3) so far departed from the accepted and usual course of proceedings as to call for a review by this court. RAP 13.5(b).

Mr. Railsback's motion to this court fails to address whether extraordinary circumstances prevented him from filing a timely notice for discretionary review. And while he makes various

unsupported statement about the merits of the district court prosecution, he fails to persuasively explain why review of the superior court order dismissing his RALJ appeal is necessary to prevent a gross miscarriage of justice. What little is in the Court of Appeals file suggests that the superior court was justified in dismissing the appeal as having been abandoned. Thus, Mr. Railsback fails to demonstrate that the Court of Appeals erred or departed from accepted practice in Denying an extension of time.

Accordingly, the motion for discretionary review is denied.

End notes

1. The superior court's order was not subject to appeal, but only for discretionary review under RAP 2.3(d). But the incorrect designation is of no moment. See RAP 5.1(c). The same 30-day time limit applies to both types of notice. See RAP 5.2.
2. I note at the outset that Mr. Railsback suggested in an email that I have no authority to rule on his motion for discretionary review, though he has not filed a motion challenging my authority. Mr. Railsback can object to this ruling by filing a motion to modify pursuant to RAP 17.7. This will afford him de novo review of the Court of Appeals decision by the judges of this court.

/S/
Steven Goff
Commissioner

October 3, 2008

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON – DIVISION II

STATE OF WASHINGTON
Respondent,

No. 37741-1-II

v.

Donald Eugene Railsback
Appellant.

ORDER DENYING APPELLANT'S MOTION TO ALLOW LATE FILING OF A OTICE OF APPEAL

APPELLANT moves for the permission to file a notice of appeal in the above-referenced matter after the deadline set forth in RAP 5.2. Upon consideration, the court has decided the motion should be denied. Accordingly, it is

SO ORDERED

DATED the 25th Day of July, 2008.

PANEL: Jj. Van Deren, Armstrong, Quinn Britnall

FOR THE COURT:

/S/
Van Deren
Chief Judge

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON Respondent, v. Donald E. Railsback, Petitioner.	NO. 82034-1 ORDER

Department I of the Court, composed of Associate Chief Justice C. Johnson and justices Sanders, Owens, J.M. Johnson and Stevens (Associate Chief Justice C. Johnson sat for Chief Justice Alexander, who recused), considered this matter at its December 2, 2008, Motion Calendar and unanimously agreed that the following order be entered.

IT S ORDERED

That the Petitioner's Motion to Modify the Commissioner's Ruling is denied

DATED at Olympia, Washington this 2nd day of December, 2008

For the Court

/S/

C. Johnson Jr.

ASSOCIATE CHIEF JUSTICE